

CHARLEY E. GOSSETT, JR., ET AL.

IBLA 81-390

Decided April 17, 1981

Appeal from the decision of the New Mexico State Office, Bureau of Land Management, declaring certain mining claims abandoned and void. NM MC 26422, etc.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Mining Claims: Abandonment

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2, in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

2. Mining Claims: Assessment Work

The filing of evidence of annual assessment work in the county clerk's office is not compliance with the recordation requirements of 43 CFR 3833.2-1.

APPEARANCES: Ronald E. Koch, Esq., Albuquerque, New Mexico, for appellants.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

On September 18, 1980, the New Mexico State Office, Bureau of Land Management (BLM), initiated a mining contest on behalf of the Bureau of Indian Affairs against 57 mining claims located in Sandoval

County, New Mexico. 1/ Shortly after the mining claimants answered the contest complaint, BLM discovered that it had no record of evidence of annual assessment work for the claims for 1979 as required by section 314(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a) (1976). Accordingly, on December 5, 1980, BLM issued a decision requiring submission of evidence to show that the required documents had been filed. Claimants responded by submitting copies of proofs of labor previously filed in the official records of Sandoval County but did not show that these documents had also been timely filed with BLM. Since claimants did not make the required showing, BLM, in nine decisions dated January 15, 1981, withdrew its contest and declared all of the claims abandoned and void for failure to comply with FLPMA.

The mining claimants 2/ have timely appealed the BLM decisions alleging that they believe that they did submit the required information.

[1] Section 314(a) of FLPMA, supra, requires the owner of unpatented mining claims located prior to October 21, 1976, to file evidence of assessment work for the claims with BLM within the 3-year period following that date, and prior to December 31 of each year thereafter. Thus appellants were required to file evidence of assessment work for their claims located prior to October 21, 1976, with BLM no later than October 22, 1979. 43 CFR 3833.2-1(a). For claims located after October 21, 1976, section 314(a) requires filing of evidence of assessment work with BLM prior to December 31 of each year following the calendar year in which the claims were located. Therefore, appellants were required to file evidence of assessment work for the two claims located in 1978 no later than December 30, 1979. 43 CFR 3833.2-1(c).

Failure to so file is considered conclusively to constitute abandonment of a claim under section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4.

The documents submitted to BLM in response to its December 5, 1980, request indicated that appellants had filed their annual proofs of labor in the county clerk's office. Filing in the county clerk's office does not meet the requirements of FLPMA. Johannes Soyland, 52 IBLA 233 (1981). Appellants were required to file with BLM by the

1/ A list of the claims at issue and the claimants of record may be found in Appendix A.

All of the claims, except NM MC 26422 and NM MC 26423, were located prior to Oct. 21, 1976. Copies of the notices of location for these claims were recorded with BLM on September 26, 1979. Mining claim NM MC 26422 was located on Mar. 25, 1978, and mining claim NM MC 26423 was located on Mar. 26, 1978. Both of these claims were recorded with BLM on June 22, 1978.

2/ Claimant Harry Griffin has not joined in this appeal.

appropriate dates and failure to do so constitutes abandonment of the claims. There is no indication in the case files or the materials submitted by appellants in December 1980, that the required documents had been timely filed in 1979. This Board has no authority to excuse lack of compliance. Glen J. McCrorey, 46 IBLA 355 (1980).

Therefore pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions of the State Office are affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

James L. Burski
Administrative Judge

APPENDIX A

<u>Claim Number</u>	<u>Claim Name</u>	<u>Claimants</u>
NM MC 26422	Buffalo #5	Thomas G. Gossett,
NM MC 26423	Buffalo #6	George L. Gossett
NM MC 69946	Buffalo #23	
NM MC 69947	Buffalo #24	
NM MC 69948	Buffalo #25	
NM MC 69949	Buffalo #26	
NM MC 69950	Buffalo #27	
NM MC 69903	Hell Hole #20	Floyd E. Gossett,
NM MC 69904	Hell Hole #19	Charley E. Gossett
NM MC 69905	Hell Hole #18	
NM MC 69906	Hell Hole #17	
NM MC 69907	Hell Hole #16	
NM MC 69908	Hell Hole #15	
NM MC 69909	Hell Hole #14	
NM MC 69910	Hell Hole #13	
NM MC 69911	Hell Hole #12	
NM MC 69912	Hell Hole #11	
NM MC 69913	Hell Hole #10	
NM MC 69914	Hell Hole #9	
NM MC 69915	Hell Hole #8	
NM MC 69916	Hell Hole #7	
NM MC 69917	Hell Hole #6	
NM MC 69918	Hell Hole #5	
NM MC 69919	Hell Hole #4	
NM MC 69920	Hell Hole #3	
NM MC 69921	Hell Hole #2	
NM MC 69922	Hell Hole #1	
NM MC 69923	Chuck #1	Charley E. Gossett, Jr.
NM MC 69924	Hell Hole	Floyd E. Gossett
NM MC 69925	Whale #1	Wanda Gossett
NM MC 69926	The Last Chance	Wannema Polk
NM MC 69929	Evlynne	Evlynne Gossett

NM MC 69927	Lill #1	Thomas G. Gossett,
NM MC 69928	Lill #2	Bert W. Gossett,
NM MC 69930	Buffalo #7	George L. Gossett
NM MC 69931	Buffalo #8	
NM MC 69932	Buffalo #9	
NM MC 69933	Buffalo #10	
NM MC 69934	Buffalo #11	
NM MC 69935	Buffalo #12	
NM MC 69936	Buffalo #13	
NM MC 69937	Buffalo #14	
NM MC 69938	Buffalo #15	
NM MC 69939	Buffalo #16	
NM MC 69940	Buffalo #17	
NM MC 69941	Buffalo #18	
NM MC 69942	Buffalo #19	
NM MC 69943	Buffalo #20	
NM MC 69944	Buffalo #21	
NM MC 69945	Buffalo #22	

NM MC 69951	Green Valley #1	Floyd E. Gossett,
NM MC 69952	Green Valley #2	George L. Gossett,
NM MC 69953	Green Valley #4	Harry Griffin
NM MC 69954	Green Valley #5	
NM MC 69955	Green Valley #6	
NM MC 69956	Yellow Stick #1	
NM MC 69957	Yellow Stick #2	

